

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Administration of the North American	)	CC Docket No. 99-200
Numbering Plan	)	
	)	
Petition for Clarification of	)	
Pac-West Telecomm, Inc.	)	

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**COMMENTS OF SBC INTERNET SERVICES, INC.**

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June 6, 2005

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## **I. INTRODUCTION AND SUMMARY**

SBC Internet Services, Inc. (SBCIS) submits the following comments in response to the petition filed by Pac-West Telecomm, Inc. (Pac-West),<sup>1</sup> which seeks “clarification” of the *SBCIS Numbering Waiver Order*.<sup>2</sup> Pac-West’s petition suffers from two fatal flaws. First, under the guise of seeking clarification of the numbering waiver granted to SBCIS, Pac-West’s petition raises a wide variety of issues entirely unrelated to numbering administration, such as section 251 interconnection rights, intercarrier compensation, price squeezes, and slamming. In raising these issues, Pac-West completely ignores this Commission’s previous determination that non-numbering issues would *not* be addressed in connection with SBCIS’s waiver request. Second, the sole numbering issue raised in Pac-West’s petition (number portability) has already been explicitly addressed by the Commission in the *SBCIS Numbering Waiver Order* and there is no need for clarification of this issue. Accordingly, the Commission should dismiss Pac-West’s flawed petition.

## **II. BACKGROUND**

### **A. The Commission’s *SBCIS Numbering Waiver Order*.**

On February 1, 2005, the Commission released an order granting SBCIS a waiver to obtain direct access to numbering resources from the North American Numbering Plan

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<sup>1</sup> Petition for Clarification of Pac-West Telecomm, Inc., CC Docket No. 99-200 (March 3, 2005) (Pac-West Petition). The Wireline Competition Bureau set a comment deadline of June 4, 2005 for the Pac-West Petition. *Wireline Competition Bureau Seeks Comment on Pac-West Telecomm, Inc., Petition for Clarification*, CC Docket No. 99-200, Public Notice, DA 05-1290 (released May 4, 2005). Because June 4, 2005, falls on a Saturday, however, the Commission’s rules provide that comments are due on Monday, June 6, 2005. *See* 47 C.F.R. § 1.4(j).

<sup>2</sup> *Administration of the North American Numbering Plan*, CC Docket No. 99-200, Order, FCC 05-20, (released Feb. 1, 2005) (*SBCIS Numbering Waiver Order*). Section 52.15(g)(2)(i) of the Commission’s rules currently requires that an applicant for numbering resources demonstrate that it is authorized to provide service in the area for which the numbering resources are being requested. 47 C.F.R. § 52.15(g)(2)(i). In the wireline context, the Commission has interpreted this rule as requiring state certification. *See Numbering Resource Optimization*, CC Docket No. 99-200, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574, 7613 ¶ 97 (2000). Because VoIP providers are usually not state certificated common carriers, they would need a waiver of section 52.15(g)(2)(i) to obtain direct access to numbering resources.

Administrator (NANPA) and/or the Pooling Administrator (PA) for use in deploying IP-enabled services, including Voice over Internet Protocol (VoIP) services, on a commercial basis.<sup>3</sup> As a condition of granting SBCIS's waiver request, the Commission required SBCIS "to comply with the Commission's other numbering utilization and optimization requirements, numbering authority delegated to the states, and industry guidelines and practices . . . ."<sup>4</sup> The Commission concluded, however, that it was not necessary to condition SBCIS' waiver "on compliance with requirements other than numbering requirements."<sup>5</sup> Instead, the Commission decided that it would be more appropriate to address "other obligations not relevant to this waiver" in other proceedings, including the *IP-Enabled Services NPRM*.<sup>6</sup> Following the release of the *SBCIS Numbering Waiver Order*, no petitions for reconsideration or petitions for review were filed.

#### **B. Pac-West's Petition for Clarification.**

On March 3, 2005, Pac-West filed a petition for clarification of the *SBCIS Numbering Waiver Order*. According to Pac-West, the *Order* has had "unintended consequences" and has caused "substantial confusion."<sup>7</sup> Pac-West asks the Commission to provide additional guidance on certain issues that Pac-West believes were not adequately addressed in the *Order*.

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<sup>3</sup> *SBCIS Numbering Waiver Order* ¶ 1.

<sup>4</sup> *SBCIS Numbering Waiver Order* ¶ 4.

<sup>5</sup> *SBCIS Numbering Waiver Order* ¶ 9 n.45 (citing Part 52 of the Commission's rules).

<sup>6</sup> *SBCIS Numbering Waiver Order* ¶ 9. See *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004) (*IP-Enabled Services NPRM*).

<sup>7</sup> Pac-West Petition at 2.

Specifically, Pac-West wants the Commission to opine on section 251 interconnection rights, intercarrier compensation, price squeezes, slamming, and number portability.<sup>8</sup>

### **III. DISCUSSION**

#### **A. The Commission Should Stand by Its Decision Not to Address Non-Numbering Issues in the Context of the *SBCIS Numbering Waiver Order*.**

Although Pac-West purports to seek “clarification” of the *SBCIS Numbering Waiver Order*, in reality Pac-West is asking the Commission to address a host of issues that are entirely unrelated to the administration of numbering resources or the waiver granted to SBCIS. Moreover, Pac-West completely fails to acknowledge that the Commission has *already* decided that it will not address non-numbering issues in the context of the instant numbering waiver decision. Instead, the Commission has stated that it plans to address such non-numbering issues in other appropriate proceedings, such as the *IP-Enabled Services NPRM*.<sup>9</sup> As discussed below, Pac-West has utterly failed to offer any compelling reasons for the Commission to depart from that sensible plan, and the Commission should dismiss Pac-West’s petition.

#### **1. Section 251 Interconnection Rights.**

Pac-West claims that, in the *SBCIS Numbering Waiver Order*, the Commission “extended the interconnection obligations imposed by section 251(a) of the 1996 Telecommunications Act to a non-carrier entity” by providing SBCIS “with the right to interconnect directly with carriers.”<sup>10</sup> According to Pac-West, the extension of section 251 interconnection rights to SBCIS

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<sup>8</sup> Pac-West Petition at i-ii.

<sup>9</sup> *SBCIS Numbering Waiver Order* ¶ 9.

<sup>10</sup> Pac-West Petition at 7.

“has introduced a significant amount of confusion” regarding the applicability of section 251, which the Commission now needs to clarify.<sup>11</sup>

The only party confused here is Pac-West. SBCIS sought direct access to numbering resources so it could pursue more efficient forms of interconnection with the public switched telephone network. As SBCIS explained in its petition and the Commission reiterated in the *SBCIS Numbering Waiver Order*, existing retail interconnection products available to VoIP providers come with numbering resources, but suffer from inherent availability and scalability limitations.<sup>12</sup> In order to overcome these limitations, e.g., by interconnecting on a trunk-side basis, SBCIS needed direct access to numbering resources because trunk-side interconnection products do not normally come with numbering resources. Thus, as the Commission observed, a waiver was necessary for SBCIS to obtain direct access to numbering resources and pursue this new form of interconnection.<sup>13</sup>

While the *SBCIS Numbering Waiver Order* gave SBCIS access to the *resources* it needs to develop a new a form of interconnection, the *Order* did not give SBCIS any new *rights* to interconnection under section 251 of the Act. SBCIS’s waiver petition did not ask the Commission for section 251 interconnection rights, and there is absolutely no discussion of such rights in the *SBCIS Numbering Waiver Order*. Indeed, Pac-West’s petition conspicuously fails

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<sup>11</sup> Pac-West Petition at 7.

<sup>12</sup> *SBC IP Communications, Inc. Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission’s Rules Regarding Access to Numbering Resources*, CC Docket No. 99-200, at 2-5 (filed July 7, 2004) (SBCIS Waiver Petition); *SBCIS Numbering Waiver Order* ¶ 5. The waiver petition was originally filed by SBC IP Communications, Inc. (SBCIP). While the waiver petition was pending, SBCIP was consolidated into SBCIS. See Letter from Jack Zinman, SBC, to Marlene Dortch, FCC, CC Docket No. 99-200 (Jan. 25, 2005).

<sup>13</sup> *SBCIS Numbering Waiver Order* ¶¶ 4-6.

to cite any portion of the *Order* where the alleged discussion of section 251 interconnection rights occurred.<sup>14</sup>

Moreover, the Commission previously determined that the appropriate vehicle to consider non-numbering issues (like section 251 interconnection rights) is the *IP-Enabled Services NPRM* -- not the *SBCIS Numbering Waiver Order*.<sup>15</sup> In fact, the Commission has already sought comment in the *IP-Enabled Services NPRM* on whether section 251 interconnection obligations should be applied to VoIP or other IP-enabled services.<sup>16</sup> Accordingly, the Commission should reject Pac-West's attempt to inject this issue into the Commission's numbering administration docket through a misguided petition for clarification.

## **2. Intercarrier Compensation.**

Pac-West alleges that the *SBCIS Numbering Waiver Order* "causes confusion concerning intercarrier compensation arrangements between licensed telecommunications carriers."<sup>17</sup> Specifically, Pac-West claims that the *Order* may allow SBCIS's affiliate, SBC, to avoid making intercarrier compensation payments to Pac-West. According to Pac-West, the interconnection agreement between SBC and Pac-West "does not allow Pac-West to bill SBC for traffic passed to Pac-West's network when SBC acts as a 'transit carrier.'"<sup>18</sup> Pac-West states that SBC is considered a "transit carrier" for traffic "that merely traverses SBC's network that a SBC

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<sup>14</sup> As Pac-West is well aware, the Commission cannot adopt new rules absent compliance with the rulemaking provisions of Administrative Procedure Act, and the *SBCIS Numbering Waiver Order* was not the product of such a rulemaking proceeding.

<sup>15</sup> *SBCIS Numbering Waiver Order* ¶ 9.

<sup>16</sup> *IP-Enabled Services NPRM* ¶ 73.

<sup>17</sup> Pac-West Petition at 2.

<sup>18</sup> Pac-West Petition at 3.

customer did not originate.”<sup>19</sup> Pac-West expresses concern that it “may not have the ability to collect either reciprocal compensation or access charges” from SBCIS, and asks the Commission to clarify that Pac-West is entitled to compensation when receiving traffic that originates from a non-carrier that has been granted a waiver to obtain direct access to numbering resources.<sup>20</sup>

Pac-West’s claim is flawed for three reasons. First, Pac-West ignores the fact that the Commission expressly stated it would not address non-numbering issues in the context of ruling on SBCIS’s numbering waiver, but would instead consider such issues in other appropriate proceedings.<sup>21</sup> Indeed, the Commission already is exploring the intercarrier compensation obligations of VoIP providers in the *IP-Enabled Services NPRM* and the *Inter-carrier FNPRM*.<sup>22</sup> Additionally, the Commission is examining transiting issues in the *Inter-carrier FNPRM*.<sup>23</sup> Thus, Pac-West’s petition for “clarification” filed in the Commission’s numbering administration docket is not an appropriate vehicle for the Commission to consider intercarrier compensation issues.

Second, Pac-West is simply wrong that the *SBCIS Numbering Waiver Order* has altered existing intercarrier compensation arrangements between carriers.<sup>24</sup> In that *Order*, the

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<sup>19</sup> Pac-West Petition at 3.

<sup>20</sup> Pac-West Petition at 3. Pac-West’s concern about collecting access charges on VoIP-originated calls that terminate to Pac-West’s network is quite puzzling in light of Pac-West’s previously-stated belief that the Commission’s existing access charge rules do not apply to VoIP services. *See* Pac-West Comments, WC Docket No. 04-36, at 22 (May 28, 2004) (“The present system of access charges should not be extended to providers of VoIP-based information services.”); Pac-West Reply Comments, WC Docket No. 04-36, at 15 (July 14, 2005) (“[T]he present access charge rules apply only to telecommunications services and do not mandate imposition of access charges on VOIP services that properly are classified as information services.”).

<sup>21</sup> *SBCIS Numbering Waiver Order* ¶ 9.

<sup>22</sup> *IP-Enabled Services NPRM* ¶¶ 61-62; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, FCC 05-33, at ¶ 80 (released March 3, 2005) (*Inter-carrier FNPRM*).

<sup>23</sup> *Inter-carrier FNPRM* at ¶¶ 120-33.

<sup>24</sup> Pac-West Petition at 2, 4.



Commission waived a single rule related to the administration of numbering resources. The Commission did not mention – let alone modify – its intercarrier compensation rules. Indeed, absent compliance with the rulemaking requirements of the Administrative Procedure Act, the Commission cannot modify those rules as a matter of law. Thus, any suggestion by Pac-West that the *SBCIS Numbering Waiver Order* changed carriers’ intercarrier compensation obligations, or that the Commission could do so under the guise of a “clarification,” is erroneous.

Third, Pac-West’s concerns about receiving appropriate compensation are misplaced. Contrary to Pac-West’s assertions, traffic that originates from a non-carrier, like SBCIS, and is delivered by SBC to Pac-West, is not transit traffic. As the Commission has observed, “[t]ransiting occurs when *two carriers* that are not directly interconnected exchange non-access traffic by routing the traffic through an intermediary carrier’s network.”<sup>25</sup> Pac-West is well aware, however, that SBCIS is *not* a carrier.<sup>26</sup> Thus, aside from being beyond the limited scope of this numbering proceeding, Pac-West’s concerns regarding compensation for SBCIS-originated traffic “transited” by another carrier and delivered to Pac-West are ultimately unfounded.<sup>27</sup> Accordingly, there is no need for the Commission to provide the “clarification” that Pac-West requests.

### **3. Price Squeeze.**

Pac-West claims that, by allowing SBCIS to obtain direct access to numbering resources, the *SBCIS Numbering Waiver Order* creates “the possibility [for] SBC and SBC-IS to engage in

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<sup>25</sup> *Inter-carrier FNPRM* ¶ 120 (emphasis added).

<sup>26</sup> Pac-West Petition at 2 (describing SBCIS as a “non-carrier”).

<sup>27</sup> To the extent SBCIS sends traffic to the PSTN, SBCIS is committed to ensuring that the appropriate compensation is paid to the relevant carriers that handle that traffic (including access charges). *See* SBCIS Comments, WC Docket No. 99-200, at 9 n.31 (April 11, 2005).

a price squeeze.”<sup>28</sup> According to Pac-West, such a price squeeze could occur if the margin between the wholesale PSTN-connectivity services offered by SBC to SBCIS and the retail prices offered by SBCIS was too narrow to allow SBCIS’s competitors to use the same connectivity services and still cover their costs when competing with SBCIS.<sup>29</sup> Pac-West urges the Commission to clarify that the provisions of the *SBCIS Numbering Waiver Order* are not sufficient to address the potential for a price squeeze “and additional obligations should be imposed on SBC when dealing with its affiliate.”<sup>30</sup>

Pac-West’s price squeeze allegations fail for two key reasons. First, like its other claims, Pac-West’s price squeeze allegations go well beyond the scope of the *SBCIS Numbering Waiver Order*. The crux of Pac-West’s concern is that the differential between the price of SBC’s wholesale PSTN-connectivity services and the price of SBCIS’s retail VoIP services may not, in Pac-West’s opinion, be sufficient. Nowhere in its petition does Pac-West explain how direct access to numbering resources (as compared to indirect access to numbering resources) is relevant to that differential. Absent an intelligible connection between direct access to numbering resources and wholesale/retail price margins, the Commission should stand by its earlier determination not to address non-numbering issues in the context of SBCIS’s waiver.<sup>31</sup>

Second, as the Commission has observed, the “factual information necessary to conduct a price squeeze analysis is highly complex,” and “[c]ourts have recognized the particular difficulty

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<sup>28</sup> Pac-West Petition at 8, 9.

<sup>29</sup> Pac-West Petition at 8-9.

<sup>30</sup> Pac-West Petition at 10.

<sup>31</sup> *SBCIS Numbering Waiver Order* ¶ 9.

of conducting a price squeeze inquiry in a regulated industry.”<sup>32</sup> The party alleging a price squeeze “bears the burden of proving its allegations and must successfully rebut the business justification of the opposing party.”<sup>33</sup> By Pac-West’s own admission, however, its concerns about a price squeeze are merely hypothetical. Indeed, Pac-West repeatedly refers to the “potential” or “possibility” of a price squeeze occurring.<sup>34</sup> Pac-West does not, however, allege that any actual price squeeze has occurred.

Pac-West also neglects to demonstrate that the underlying market conditions are such that a price squeeze *could* occur. “[P]rice squeezes are thought to be very difficult (and therefore rare) because they entail losses from predatory pricing in the short term.”<sup>35</sup> To be successful, the firm allegedly engaging in a price squeeze “must be able to raise the downstream price of the end-user service long enough to recoup its losses after its rivals have exited the market, without inducing new entry.”<sup>36</sup> As the Commission has pointed out, however, “[t]hese losses cannot be recouped by later supra-competitive pricing and monopoly profits because entry prevents such practices.”<sup>37</sup> Pac-West does not even allege, let alone prove, that the marketplace for IP-enabled services – which is teeming with new competitive entrants – would allow a firm to charge supra-competitive prices. Pac-West has utterly failed to set forth a colorable price squeeze claim and

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<sup>32</sup> *Application by Verizon New England, et al, for Authorization to Provide In-Region, InterLATA Services in New Hampshire and Delaware*, WC Docket No. 02-157, Memorandum Opinion and Order, 17 FCC Rcd 18660 ¶ 145 (2002).

<sup>33</sup> *Joint Application by SBC Communications, Inc., et al, for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Order on Remand, 18 FCC Rcd 24474 ¶ 7 (2003).

<sup>34</sup> Pac-West Petition at 8-9.

<sup>35</sup> *Applications of Pacific Telesis Group, Transferor, and SBC Communications, Inc., Transferee*, Report No. LB-96-32, Memorandum Opinion and Order, 12 FCC Rcd 2624 ¶ 54 (1997) (*Pac-Tel Merger Order*).

<sup>36</sup> *Merger of MCI Communications Corporation and British Telecommunications PLC*, GN Docket No. 96-245, 12 FCC Rcd 15351 ¶ 162 (1997).

<sup>37</sup> *Pac-Tel Merger Order* ¶ 54.

the Commission should not expend its scarce resources responding to Pac-West's hypothetical concerns.<sup>38</sup>

#### 4. Slamming.

Pac-West observes that the *SBCIS Numbering Waiver Order* did not address whether federal or state slamming rules apply to SBCIS.<sup>39</sup> Pac-West then poses a series of hypothetical questions about the consequences of applying (or not applying) federal and/or state slamming rules in the situation where a customer leaves Pac-West for SBCIS or vice versa.

Pac-West again fails to recognize that the Commission has previously found that it is unnecessary “to condition SBCIS’ waiver on compliance with requirements other than numbering requirements.”<sup>40</sup> In fact, the Commission is already seeking comment on whether slamming regulations should be applied to VoIP services in the *IP-Enabled Services NPRM*.<sup>41</sup> Thus, there is no reason for the Commission to depart from its prior determination that non-numbering issues should be addressed in other proceedings, such as the *IP-Enabled Services NPRM*, and not in the context of SBCIS’s numbering waiver.<sup>42</sup>

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<sup>38</sup> Pac-West also suggests that the *SBCIS Numbering Waiver Order* enables SBCIS “to obtain discriminatory access to the network via its incumbent LEC affiliate SBC.” Pac-West Petition at 8. However, Pac-West offers no support for this baseless assertion. SBCIS has chosen to purchase PSTN-connectivity from SBC via SBC’s TIPToP service. As Pac-West is well aware, TIPToP is a federally tariffed service that is available on a non-discriminatory basis to any VoIP provider that chooses to purchase it. SBC filed the TIPToP tariff in November 2004 and the tariff has not been suspended or subjected to a Commission investigation under section 205 of the Act. Thus, there is absolutely no merit to Pac-West’s claim of discrimination.

<sup>39</sup> Pac-West Petition at 6.

<sup>40</sup> *SBCIS Numbering Waiver Order* ¶ 9.

<sup>41</sup> *IP-Enabled Services NPRM* ¶ 72.

<sup>42</sup> *SBCIS Numbering Waiver Order* ¶ 9.

**B. The *SBCIS Numbering Waiver Order* Adequately Addresses Number Portability and There Is No Need for “Clarification.”**

Pac-West claims that the applicability of the Commission’s number portability rules to SBCIS is “entirely unclear” as a result of the *SBCIS Numbering Waiver Order*.<sup>43</sup> According to Pac-West, the Commission “has cast confusion” on the question of whether an “unregulated non-carrier,” such as SBCIS, has a legal obligation to port telephone numbers to a carrier, such as Pac-West.<sup>44</sup> Pac-West asserts that the Commission must take further action to clarify SBCIS’s specific number portability obligations and duties under the *SBCIS Numbering Waiver Order*.<sup>45</sup>

While Pac-West has, at long last, raised an issue actually related to numbering, Pac-West is simply mistaken that the *SBCIS Numbering Waiver Order* created any uncertainty about the applicability of the Commission’s number portability rules to SBCIS. In its waiver petition, SBCIS sought a waiver of a single Commission rule (rule 52.15(g)(2)(i) regarding state certification) and explicitly stated that it would comply with all other numbering requirements, including number portability.<sup>46</sup> In the *SBCIS Numbering Waiver Order*, the Commission waived only section 52.15(g)(2)(i) of its rules and explicitly required SBCIS “to comply with the Commission’s other numbering utilization and optimization requirements, numbering authority delegated to the states, and industry guidelines and practices . . . .”<sup>47</sup> The Commission further stated that “SBCIS will be responsible for processing port requests directly rather than going

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<sup>43</sup> Pac-West Petition at 4.

<sup>44</sup> Pac-West Petition at 4.

<sup>45</sup> Pac-West Petition at 4-5.

<sup>46</sup> SBCIS Waiver Petition at 10.

<sup>47</sup> *SBCIS Numbering Waiver Order* ¶ 4.

through a LEC,” thus squarely placing the burden of complying with the Commission’s number portability requirements on SBCIS.<sup>48</sup>

Despite the Commission’s clear guidance on the applicability of its number portability requirements to SBCIS, Pac-West nonetheless professes ignorance of how those rules will be applied in practice. For example, Pac-West poses the following questions:<sup>49</sup>

- “Does this mean that SBC-IS can send a Local Service Request (“LSR”) directly to a telecommunications carrier like Pac-West and directly interact with the Number Portability Administration Center (“NPAC”) and the porting out carrier . . . ?”
- “[D]o the timeframes and processes that govern wireline-to-wireline and wireline-to-wireless portability apply to SBC-IS and similarly situated entities when they request a port?”
- “[I]f a customer of SBC-IS would like to port their telephone number to Pac-West, does Pac-West submit the LSR to SBC-IS . . . ?”

Under the plain language of the *SBCIS Numbering Waiver Order*, the answer to all of these questions is “yes” – SBCIS has the same number portability obligations and must follow the same number portability processes as any carrier that obtains direct access to numbering resources. Thus, notwithstanding Pac-West’s claims to the contrary, there is nothing for the Commission to “clarify” regarding the number portability requirements imposed on SBCIS as result of the *SBCIS Numbering Waiver Order*.

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<sup>48</sup> *SBCIS Numbering Waiver Order* ¶ 9.

<sup>49</sup> Pac-West Petition at 5.

### **III. CONCLUSION**

For all of the foregoing arguments, SBCIS urges the Commission to reject Pac-West's petition for clarification.

Respectfully Submitted,

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June 6, 2005